

APPEAL NO. 010639

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 27, 2001. With respect to the issue before him, the hearing officer determined that during the sixth quarter supplemental income benefits (SIBs) qualifying period, the respondent (claimant) satisfactorily participated in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) and that the claimant was entitled to sixth quarter SIBs. The appellant (carrier) urges on appeal that these determinations are against the great weight and preponderance of the evidence. The claimant urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he had an impairment rating greater than 15%; that the claimant had not elected to commute any portion of his impairment income benefits; and that the sixth quarter of SIBs ran from October 22, 2000, through January 20, 2001. The corresponding qualifying period for sixth quarter SIBs was from July 10, 2000, to October 8, 2000.

The claimant introduced into evidence an Individualized Plan for Employment (IPE) dated June 6, 2000, with the TRC that sets an employment goal of performing computer-aided drafting. The IPE states that the following steps were necessary to achieve the employment goal: registration with the Texas Workforce Commission; obtain certification; improve ability to communicate in English; and increase physical stamina. The IPE provides that from June 6, 2000, through December 31, 2002, the claimant agreed to the following services: tuition for vocational training if not provided through insurance or Pell Grant not to exceed \$3,000.00; books for training; and counseling and guidance, job placement/maintenance assistance. The IPE also requires that the claimant take 12 hours each "semester" and maintain a 2.0 "GPA."

The claimant testified that he began English listening and speaking classes as well as English grammar/writing classes in June 2000, and completed the courses in December 2000. The claimant provided completion certifications for both courses. At least one course description in evidence indicates how that work shall be "graded." Also, a transcript from the college showed that starting in late August 2000, for the fall semester, the claimant was enrolled in what appeared to be at least 12 hours (CEUs). There is no contrary evidence that this could be construed in a manner not compliant with the IPE. (A letter from the college that appears to explain how its courses are credited or graded was excluded from evidence upon objection from the carrier.)

Finally, the claimant introduced a check-off form letter signed by a TRC counselor, dated November 8, 2000, documenting that he was attending computer skills training and

English as a second language (ESL) classes and that he had "followed through with school and was doing well."

The carrier argues that the claimant is not entitled to sixth quarter SIBs because the claimant participated in a TRC program that does not constitute a full-time program. The carrier also argues that the claimant did not satisfactorily complete his obligations under the IPE, which also required a search for employment. The carrier argues that the claimant was not enrolled in at least 12 credit hours of course work and that the classes he was enrolled in resulted in a grade of passing or failing, rather than a letter grade.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC *during* the qualifying period. We have held that participation in such program does not have to span the entire qualifying period so long as it occurs "during" the qualifying period. Texas Workers' Compensation Commission Appeal No. 001536, decided August 9, 2000.

We also note that the definition of "full-time" program is not made with reference to any specific number of hours. Rule 130.101(8) defines "full time vocational rehabilitation program" as follows:

Any program, provided by the [TRC] . . . , for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

In this case, the claimant's "plan" does state that he should take 12 hours per semester. The evidence from the college he attends supports a finding that he complied with the IPE in this regard (no evidence was offered by the carrier to show that the CEUs indicated something less than such attendance). We cannot agree that reference in the program to a "GPA" means that any program offering the required courses on a pass-fail basis fails to comply with the plan. The letter from the TRC is evidence that, in that agency's opinion, the claimant had satisfactorily complied with his plan.

Finally, the IPE states at the very beginning that the claimant's employment obligation is to begin after his retraining. We do not agree that the IPE establishes a requirement to simultaneously attend training and search for a job. As we noted in Texas Workers' Compensation Commission Appeal No. 000001, decided February 16, 2000, the preamble to Rule 130.102(d)(2) states that any program provided by the TRC should be considered a full-time program. The preamble stated that "[t]his concept precludes an

insurance carrier from requiring an injured employee to participate in a vocational rehabilitation program sponsored by the TRC . . . and then expect the injured employee to continue to seek employment commensurate with the injured employee's ability over and above the rehabilitation plan requirements; seeking employment may be part of the rehabilitation program." 24 Tex. Reg. 10343 (1999).

We therefore find no error in the hearing officer's determination that the claimant satisfied the good faith requirement under Rule 130.102(d)(2) and is, therefore, entitled to sixth quarter SIBs. The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge